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Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: ***Ex Parte*, CC Docket Nos. 96-98/95-185**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, MGC Communications, Inc. ("MGC") submits this notice, in the above-captioned docketed proceedings, of an oral and written *ex parte* made on July 27, 1999 and July 28, 1999 with the following parties:

1. July 27, 1999: Chris Libertelli, Sanford Williams, Jon Reel, and D. Anthony Mastando of the Policy Division of the Common Carrier Bureau.
2. July 27, 1999: Sarah Whitesell Commissioner Tristani's legal advisor on Common Carrier issues.
3. July 27, 1999: Bill Bailey, Commissioner Furchtgott-Roth's legal advisor on Common Carrier issues.
4. July 27, 1999: Kyle Dixon, Commissioner Powell's legal advisor on Common carrier issues.
5. July 28, 1999: Dorothy Atwood, Chairman Kennard's legal advisor on Common Carrier issues.
6. July 28, 1999: Linda Kinney, Commissioner Ness' legal advisor on Common Carrier issues.

The presentation was made by Scott A. Sarem, Assistant Vice President of Regulatory Affairs and John Boersma, Senior Vice President of Operations, from MGC. During the meeting the parties discussed MGC's need for certain unbundled network elements. These proposed network elements were detailed in presentation materials and include information regarding the following topics:

- Access to unbundled loops, including loops located behind remote switches, access nodes, integrated digital loop carriers, etc.;
- Network interface devices and inside wire;
- Interoffice transport;
- Dark fiber;

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- Cross-connects being included as part of the local loop; and
- Sub-loop unbundling as well as the ILECs' ability to provision sub-loops.

Pursuant to Sections 1.1206(b)(2), an original and two copies of this *ex parte* notification and the accompanying presentation materials are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Scott A. Sarem
Asst. Vice president, Regulatory Affairs
MGC Communications, Inc.
(702) 310-4406

Enclosure

cc: Kent Heyman
John Boersma

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JULY 26, 1999

JUL 30 1999

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BY HAND DELIVERY

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: ***Ex Parte*, CC Docket Nos. 96-98, 95-185**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, MGC Communications, Inc. ("MGC") submits this notice, in the above-captioned docketed proceedings, of an oral an written *ex parte* made on July 22, 1999, during a telephone call with Jonathan Reel of the Policy Division of the Common Carrier Bureau. The presentation was made by Scott A. Sarem of MGC. During the meeting the parties discussed MGC's need for sub-loop unbundling and ILECs' ability to provision sub-loops. Pursuant to Sections 1.1206(b)(2), an original and two copies of this *ex parte* notification are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Scott A. Sarem
Asst. Vice president, Regulatory Affairs
MGC Communications, Inc.

Enclosure
cc: Jonathan Reel via fax (202) 418-0637

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July 23, 1999

Mr. Jonathan Reel
Common Carrier Bureau Policy Division
Federal Communications Commission Portals
445 12th Street, SW, 5th Floor
Washington, DC 20554
Via Fedex and fax (202) 418-0637

Re: Sub-Loop Unbundling CC Docket Nos. 96-98, 95-185

Jonathan:

Pursuant to our telephone conversation, MGC Communications, Inc. ("MGC"), submits the following information in support of requiring ILECs to provide sub-loop unbundling of local loops.

First, sub-loop unbundling is technically feasible. MGC has attached a drawing of how sub-loop unbundling typically occurs. (See exhibit 1) MGC and other CLECs are collocated in ILEC central offices where they access the unbundled loop. In some cases, ILECs have deployed Integrated Subscriber Line Concentrators ("ISLC") to more efficiently serve certain customers. Generally, these ISLC's or junction boxes or D-4 channel banks are connected to the ILEC central office through a feeder cable. Then, the sub-loop is provisioned through the distribution cable. The sub-loop is provisioned from the ISLC to the customer. The CLEC will have accessed the ILEC ISLC or junction box by provisioning its own feeder cable (transport) from the ILEC central office or any other point. GTE has detailed how it would provision such an arrangement in a letter dated April 16, 1998 to Mark Peterson, MGC's Western Region President from Ellen Robinson, GTE's Director of Wholesale Markets. (See exhibit 2) In that letter, under the heading "UNE loops Served from a GTE Pair gain Location (remote), March 4, 1998)," GTE details how it may provide sub-loops through a D-4 channel bank (another term for an ISLC or a junction box).

Some ILECs may argue that they have no space available at an ISLC or junction box. That simply is not true. MGC is willing to allow the ILEC to manage its connection at the ISLC (much like virtual collocation) and the ILEC may allow CLECs to use ILEC warehoused space for fiber termination (However, fiber termination equipment may not take up more than a shelf or two on an equipment rack). Also, some ILECs may argue that CLECs presence in an ISLC or junction box may interfere with the ILEC network. Again, this assertion is flawed based on the recent FCC 706 Ruling (FCC 99-48) in CC Docket 98-147.

Bringing the World to You
MGC

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In that Docket in paragraphs 34 to 36, the Commissions detailed equipment safety requirements that require all CLEC collocated equipment to be NEBS compliant. NEBS compliance creates a presumption of safety to the ILEC network.. Additionally, the Commission ruled that ILECs may not place additional safety standards on CLECs that they do not require of themselves. (See attached excerpts from FCC 99-48 attached as exhibit 3).

This letter is meant to provide support for sub-loop unbundling. If you have nay questions, please do not hesitate to contact me at (702) 310-4406.

Best Regards,

Scott A. Sarem
Asst. Vice President, Regulatory Affairs
MGC Communications, Inc.

cc: Magalie Roman Salas, FCC

EXHIBIT 1

Sub-Loop Unbundling

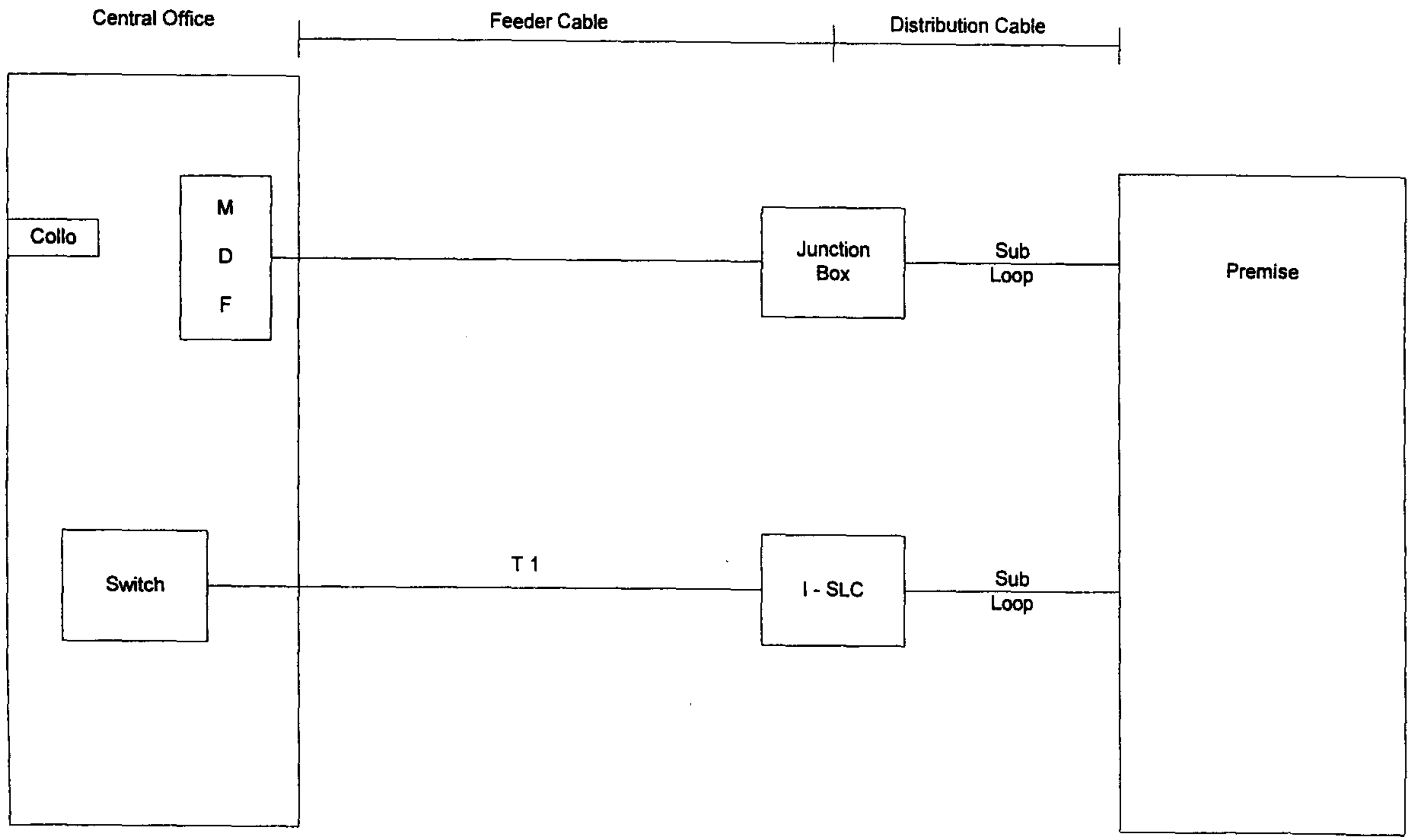

EXHIBIT 2

Ellen Robinson
Director - Wholesale Markets

GTE

GTE Network Services

CA500CM
One GTE Place
Thousand Oaks, CA 91362
805 372-8845
Fax: 805 373-6248

Vicki –
John –
Kent –
Mike M. –
Scott –
Pls review/comment
– Mark

April 16, 1998

Mr. Mark Peterson
President - Western Region
3400 Inland Empire Boulevard
Suite 201
Ontario, CA 91764

Dear Mark:

This letter is in response to your correspondence dated March 20, 1998. Each of the issues you described are addressed below.

Provisioning

On April 3, 1998 GTE representatives met with John Boersma and you to review a revised process for provisioning. Larry Walton, Director - Service Fulfillment, explained the VIVID procedures which were implemented last week. Beginning Monday, April 13, VIVID began confirming orders, identify jeopardy and reporting on achieved commitments - jeopardy and due dates missed due to GTE or MGC actions. VIVID will report jeopardies to the NOMC for NOMC rescheduling of the jeopardy. A report will be released daily and will be modified as industry standards are developed. GTE will confirm results based on the VIVID center reports. As Larry explained, the VIVID center is an internal work group which is responsible for coordinating the provisioning process. They are not intended to be a customer contact point; your established contacts will remain the same. Additionally, all DAC-FAC activity will be handled by our Ontario office. This work group will have the training necessary to efficiently process UNE orders. As agreed, MGC will continue to provide GTE a list of orders, including the due date when possible, to ensure we are capturing all order activity.

✓ Changes show improvements to date

Mark Heitzman, Manager - NOMC, provided the status on issues related to NOMC order processing. The NOMC representatives were also trained on VIVID procedures last week.

Mr. Mark Peterson
April 16, 1998
Page 2

These steps will ensure a substantial improvement in our provisioning results; a follow up meeting will be held in May to review results for April.

Parity

GTE's Due Date Policy

Resale:

GTE will provide the same due dates for any and all resale services ordered by a CLEC with the same due date that a GTE retail end user receives in a given geographical area for like and comparable services. These due dates do not apply to any Unbundled Network Element (UNE) service.

UNE Loop Installation Intervals - No Field Visit:

GTE will provide a 3 day standard interval for all CLEC unbundled loops providing POTS for conversions where a field visit is not required. Standard intervals quoted will be based on business days from application date to completion date. UNE loops providing advanced services, i.e. DS1, ISDN, etc. will receive due dates equal to like and similar special services provided to GTE end users.

UNE Loop Installation Intervals - Field Visit:

GTE will use the due date provided by Due Date Manager when available for all UNE POTS loops not behind pair gain devices. If Due Date Manager is not available in a given area, a default of a 5 business day interval will be used.

UNE Loop Installation Intervals - Integrated Pair Gain:

GTE will provide a 5 day standard interval for UNE POTS loops served from a pair gain device where facilities are available. Where existing physical or universal loop carrier does not exist, GTE will notify CLEC within 48 hours of receipt of the order. The CLEC may opt to use the BFR process, a monthly recurring charge, or cancel the order.

The UNE loop behind pair gain procedure is enclosed for your review.

<u>Remote Location Information and Other Network Information</u>

GTE has declined to disclose to MGC the location of pair gain facilities within the network because this information is not available on a global basis. The information becomes available on a circuit by circuit basis only when the LSR is received in the NOMC.

?

The NOMC service representative validates whether the particular UNE loop requested is served behind a pair gain. This data is available on a CSR for California accounts <u>only</u> and is identified as a *"070003: CXS DC01;SYS2:CXR"* record on the CSR. However, some training may be required to understand the information provided on the CSR.

GTE has investigated MGC's request to provide data on a global basis. The data is not available. Investigation has revealed that the source of the data is available in MARK but would require program modifications to retrieve on a global basis. GTE requires $3 to $5 thousand dollars to do an Order Of Magnitude (OOM) to determine total costs to provide data MGC is requesting. If MGC is interested in paying for an OOM review, GTE will consider the review.

GTE is investigating the possibility of providing SAG database information to MGC.

<u>Interim Tracking and Management of MGC Loop Orders to GTE</u>

This process is superseded by the implementation of VIVID procedures.

Kurt?

<u>Non-Recurring Charges</u>

The adaption of the AT&T agreement by MGC is all inclusive. While GTE can not renegotiate pieces of the agreement, we will determine the legal and regulatory flexibility relative to renegotiating a new contract.

We are committed to providing quality service to our customers and appreciate your willingness to work with us to achieve that goal. If you wish any clarification of the information provided, please contact me at (805) 372-8845.

Ellen Robinson

ER:lan
Enclosure

UNE Loops Served From a GTE Pair Gain Location (Remote), March 4, 1998

GTE will use the following process for provisioning of UNE Loops behind a pair gain facility:

1. GTE will first use all available, spare physical or pair gain facilities to provision any CLEC request for a UNE loop.

2. Upon exhaust of all available spares, GTE will notify CLEC of the lack of facilities, using the Jeopardy Report.

3. CLEC may choose to cancel the pending order or issue a bonafide request (BFR) to GTE to construct pair gain facilities to complete the provisioning of the UNE loop. In both cases, CLEC must notify the NOMC of their intent by the use of a Supplemental LSR.

4. CLEC will provide a BFR to their Account Manager. After receipt of the BFR, the GTE Account Manager will provide to CLEC a price quote and due date for installation of a D-4 channel bank or similar pair gain for UNE loops. The price quote will be provided within 30 days of receipt of a valid BFR.

5. CLEC may choose to accept or reject the BFR proposal. If rejected, the pending service order(s) for UNE loops for that particular serving location will be canceled.

6. If CLEC chooses to accept the BFR proposal, GTE will construct the pair gain and notify CLEC of the new UNE Loop service order due date by the use of the Jeopardy process. The CLEC D-4 channel bank or pair gain will be dedicated to the CLEC for its own use. GTE will keep assignment control and will own, maintain and repair the D-4 type facility.

7. When the available pair gain facilities for the dedicated CLEC pair gain are exhausted, GTE will follow the above described procedure to notify CLEC.

As an alternative to the BFR process, where the CLEC would pay for an entire channel bank, and it would then be dedicated for their use, GTE is willing to offer the option of a Monthly Recurring Charge (MRC) for UNE loops behind pair gains.

A benefit of the MRC option to the CLEC would be that the time frame to process a BFR would be eliminated. There would be no dedicated banks for the CLEC, therefore, in many instances, facilities would be available, as GTE would monitor pair gain fill and use best efforts to install pair gain in advance of anticipated service orders. In some cases, there may be delays in provisioning due to the time frame needed to order and install pair gain, similar to GTE retail end users who order special services provided thru the pair gain.

An additional benefit to the CLEC would be the flexibility that the MRC procedure would allow the CLEC. The CLEC could add and subtract UNE loops by pair gain location without having to invest dollars up front prior to ordering the loops.

The MRC charge for UNE loops will vary by state. This charge varies from around $9.00 to $16.00. This charge will be added by the NOMC to every UNE loop served behind pair gain, if the CLEC chooses to use this process in lieu of the BFR process. The CLEC will be notified on the Local Service Confirmation (LSC) of the MRC until such time as the CLEC has the capability to identify end users served by pair gain locations during the preorder process. The MRC on the LSC will allow the CLEC to accept or cancel the service order prior to provisioning.

GTE is offering the CLEC the option of either 1) the BFR process to pay for installation of dedicated pair gains to serve the UNE loops, or 2) the use of an MRC for all loops behind a pair gain. GTE is not willing to offer this option based upon location. This option is CLEC specific.

Should the CLEC choose the MRC process, GTE would need a few weeks to implement the complete procedure.

EXHIBIT 3

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	

FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 18, 1999 **Released: March 31, 1999**

Comment Date: **June 15, 1999**
Reply Comment Date: **July 15, 1999**

By the Commission: Commissioner Furchtgott-Roth dissenting in part and issuing a statement; Commissioner Powell concurring in part and issuing a statement; Commissioner Tristani issuing a separate statement.

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Paragraph

construct their own connecting transmission facilities.[71] We sought comment on any additional steps we might take so that competitive LECs are able to establish cross-connects to the equipment of other collocated competitive LECs.

33. We now revise our rules to require incumbent LECs to permit collocating carriers to construct their own cross-connect facilities between collocated equipment located on the incumbent's premises. No incumbent LECs objected specifically to permitting competitive LECs to provision their own cross-connect facilities. Although we previously did not require incumbent LECs to permit collocating carriers to construct their own cross-connect facilities, we did not prevent incumbent LECs from doing so.[72] Several competitive LECs raise the issue of delay and cost associated with incumbent LEC provision of cross-connect facilities, which are often as simple as a transmission facility running from one collocation rack to an adjacent rack.[73] We see no reason for the incumbent LEC to refuse to permit the collocating carriers to cross-connect their equipment, subject only to the same reasonable safety requirements that the incumbent LEC imposes on its own equipment.[74] Even where competitive LEC equipment is collocated in the same room as the incumbent's equipment, we require the incumbent to permit the new entrant to construct its own cross-connect facilities, using either copper or optical facilities, subject only to the same reasonable safety requirements the incumbent places on its own similar facilities.[75] Moreover, we agree with Intermedia that incumbent LECs may not require competitors to purchase any equipment or cross-connect capabilities solely from the incumbent itself at tariffed rates.[76]

34. Equipment Safety Requirements. In the *Advanced Services Order and NPRM*, we tentatively concluded that incumbent LECs may require that all equipment that a new entrant places on its premises meet safety requirements to avoid endangering other equipment and the incumbent LECs' networks.[77] Certain performance and reliability requirements, however, may not

71 *Id.*

72 47 C.F.R. § 51.323(h)(1).

73 *See* e.spire Comments at 25-26; ICG Comments at 16-20; Intermedia Comments at 27-28; Texas PUC Comments at 8; Allegiance Comments at 4.

74 *See infra* para. 36.

75 *See* Level 3 Comments at 12.

76 *See* Intermedia Comments at 38.

77 *Advanced Services Order and NPRM* at para. 134. Incumbent LECs generally require that equipment collocated at their premises complies with Bellcore's Network Equipment and Building Specifications (NEBS). These specifications, which tend to increase the cost of equipment, include both safety requirements (NEBS Level 1), such as fire prevention specifications, and performance requirements (NEBS Levels 2 and 3).

be necessary to protect LEC equipment.[78] Such requirements may increase costs unnecessarily, which would lessen the ability of new entrants to serve certain markets and thereby harm competition. We tentatively concluded that, to the extent that incumbent LECs use equipment that does not satisfy the Bellcore Network Equipment and Building Specifications (NEBS) requirements, competitive LECs should be able to collocate the same or equivalent equipment. We further tentatively concluded that incumbent LECs should be required to list all approved equipment and all equipment they use.[79]

35. We conclude that, subject to the limitations described herein, an incumbent LEC may impose safety standards that must be met by the equipment to be collocated in its central office. First, we agree with commenters that NEBS Level 1 safety requirements are generally sufficient to protect competitive and incumbent LEC equipment from harm.[80] NEBS safety requirements, originally developed by the Bell Operating Companies' own research arm, are generally used by incumbent LECs for their own central office equipment, so we conclude that NEBS adequately address the safety concerns raised by incumbent LECs when competitors introduce their own equipment into incumbent LEC central offices.[81] We reject SBC's argument that equipment safety and performance standards should vary from location to location and that no general rules of applicability should be imposed.[82] While we agree that equipment safety standards are important to protect incumbent LEC central offices, we also believe that as a matter of federal policy, there should be a common set of safety principles that carriers should meet, regardless of where they operate. We agree with those commenters that contend that NEBS requirements that address reliability of equipment, rather than safety, should not be used as grounds to deny collocation of competitive LEC equipment.[83] Thus, an incumbent LEC may not

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78 *Id.* at para. 135.

79 In the *Advanced Services Order and NPRM*, we suggested that equipment reliability standards may be better left to the mutual agreement of the competitive LEC, its customers, and its equipment providers. By requiring competitive LECs to satisfy NEBS performance requirements, on top of NEBS safety requirements, competitive LECs may be compelled to engage in unnecessary, costly, and lengthy testing which could delay competitive LECs' ability to provide advanced services. *Advanced Services Order and NPRM* at para. 135 n.253. *See* e.spire Comments at 28 (allowing incumbent LECs to impose NEBS performance requirements imposes "unreasonable, costly and burdensome" requirements on competitive LECs).

80 *See* MCI Worldcom Comments at 62 (competitive LECs "must be given a level of certainty with respect to acceptable equipment"); Sprint Comments at 13; AT&T Comments at 78.

81 *See Advanced Services Order and NPRM* at para. 134.

82 *See* SBC Comments at 18-19.

83 *See* Covad Comments at 25; AT&T Comments at 78; Sprint Comments at 13; Allegiance Comments at 4; DATA Reply at 22; Intermedia Comments at 37.

refuse to permit collocation of equipment on the grounds that it does not meet NEBS performance, rather than safety, requirements.[84]

36. Second, we conclude that, although an incumbent LEC may require competitive LEC equipment to satisfy NEBS safety standards, the incumbent may not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates in its premises.[85] Because incumbent LECs generally have been setting their own rules for the safety standards that collocating carriers must adhere to, we need to adopt measures that reduce incentives for discriminatory action. We agree with commenters' suggestion that an incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet.[86] We find that absent such a requirement, incumbent LECs may otherwise unreasonably delay the ability of competitors to collocate equipment in a timely manner. For example, without this requirement, incumbents could unfairly exclude competitors' equipment for failing to meet safety standards that the incumbent's own equipment does not satisfy, or may unreasonably refuse to specify the exact safety requirements that competitors' equipment must satisfy.

d. Alternative Collocation Arrangements

(1) Background

37. In the *Advanced Services Order and NPRM*, we made several tentative conclusions and sought comment on issues raised by ALTS in its petition contending that the practices and policies that incumbent LECs employed in offering physical collocation impeded competition by imposing substantial costs and delays on competing carriers for space and construction of collocation cages.[87] Based on the record submitted in this proceeding, we now adopt several of our tentative conclusions related to the provisioning of collocation space in incumbent LEC premises.

38. In the *Advanced Services Order and NPRM*, we tentatively concluded that we should require incumbent LECs to offer collocation arrangements to new entrants that minimize

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[84] *See supra* n.79 and accompanying text.

[85] *See* Covad Comments at 24-25; Qwest Comments at 55; AT&T Comments at 78; DATA Reply at 22; Illinois C.C. Comments at 9-10; Sprint Comments at 13; KMC Comments at 15.

[86] *See* Covad Comments at 25 (only with such a procedure in place "will [competitive] LECs be able to know if they are receiving discriminatory treatment"); AT&T Comments at 78; Sprint Comments at 13.

[87] *Advanced Services Order and NPRM* at paras. 136-44. *See* AT&T Comments at 79.


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WHO IS MGC COMMUNICATIONS, INC.?

- Facilities based CLEC providing competitive local voice and data services to Residential and Small Business Consumers in CA, NV, IL, GA, and FL. Expanding Network in 20 new markets.
- Collocated in approximately 250 ILEC Central Offices in Five States representing approximately 12 million addressable lines.
- Provides ubiquitous service through the leasing of unbundled loops from Incumbent Local Exchange Carriers
- Approximately 100,000 access lines provisioned on MGC switches.
- Service offerings to Residential and Small Business Consumers in the manner contemplated by the Telecommunications Act of 1996.
- Current Customer base is approximately 40% Residential and 60% Business.
- One of the Only CLECs providing facilities based residential service.
- Raised over $440 million dollars through debt and equity to deploy a facilities based local network as permitted by the Telecommunications Act of 1996.

A

EXHIBIT A

LOOPS SERVED BY REMOTE SWITCHES, PAIR-GAIN DEVICES, OR DIGITAL LOOP CARRIERS

Loops served by remote switches, pair-gain devices, or digital loop carriers

MGC provides facilities based voice and data services predominantly to the areas that surround larger metropolitan areas ("The suburban urban ring"). Essentially, MGC provides a telecommunications choice to the residential and small business consumers located in America's suburbs. A by-product of providing service to areas other than the main downtown or commercial centers is that development is fairly recent. Consequently, rate centers are often either rural or formerly rural. In an effort to provide cost-effective service to rural areas, most ILECs have deployed loops served by remote switches, pair-gain devices, and digital loop carriers. Generally, the ILEC serve customers out of remote terminals through a digital rather than an analog loop. CLECs like MGC cannot provide service to those customers served by digital loops unless the ILEC provides translation equipment that allows the CLEC to provision the service from a device other than the remote switch, pair-gain device, or digital loop carrier. Curiously, not all ILECs allow CLECs to provide service to ILEC customers served by digital loops. Therefore, the Commission must act to include an all-encompassing definition of loops so that ILECs may not game the regulatory regime and deny CLECs access to all ILEC customers under the auspices of a technical loophole.

Not all ILECs treat digital loops the same. For instance, Pacific Bell and Sprint will provide MGC with access to their loops without regard to whether the loop is served by a remote switch, pair-gain device, or digital loop carrier (collectively referred to as "remotes."). Rather, Pacific Bell and Sprint will either rearrange facilities or provision a digital loop on a D-4 channel bank where MGC is collocated allowing MGC to provision the loop off the channel bank. Sprint and Pacific Bell do not charge any additional amount for MGC to acquire a loop in this manner.

Ameritech and GTE, on the other hand, are less cooperative. In Ameritech territory in Illinois, MGC cannot serve any ILEC customer served by a digital loop without submitting a request to Ameritech for "special construction" of the loop. (See Exhibit 1, which provides months of correspondence and dispute resolution on this issue) This special construction may cost as much as $9,366.08 for one loop. (See Exhibit 2 an Ameritech quote for Special Construction) Ameritech is not allowed to charge special construction in Michigan, where the Michigan Public Service Commission ruled that Ameritech cannot charge special construction charges for loops located behind remotes. (See MPSC, Case No. U-11735 attached as Exhibit 3) In making its decision, the Michigan Public Service Commission reasoned that the Ameritech must treat competitors as it treats itself with regard to the provisioning of loops. (See Exhibit 3) As a result, in Michigan, Ameritech no longer charges a special construction fee for loops located behind remotes. (See Exhibit 4) However, in Illinois, Ameritech still attempts to charge CLECs like MGC a special construction charge for loops located behind remote terminals. (See Exhibit 2) Not only does this anticompetitive practice illustrate the need for national UNE standards, but also represents a barrier to entry for CLECs and in MGC's case, limits the reach of competition. In fact, in certain areas, such as Naperville, Illinois, MGC is precluded from serving more than 50% of the consumers served by the Ameritech- Naperville central office because those customers are located behind remotes.

Until recently, GTE's policies and procedures have been even more egregious. GTE not only limits MGC's ability to provide competitive service to customers served by remotes, it does not notify MGC (in most cases) of its inability to serve a particular customer until the day the customer is scheduled to convert its service from GTE to MGC. (See Exhibit 5, e-mails from MGC operation staff illustrating this issue) When MGC first complained of this issue to GTE, GTE's proposed solution to this inequity was to offer that MGC may purchase a D-4 channel bank (approximately $34,000), collocate it in a remote terminal and then provide service to the customers MGC seeks to serve. (See Exhibit 6 under Section titled "UNE loops Served from a GTE Pair gain Location (remote), March 4, 1998") Not only was this suggestion contrary to industry standards, it drastically increases the cost of customer acquisition. Therefore, GTE has effectively precluded MGC from competing for a certain class of GTE customer. MGC continued to escalate this issue with GTE for more than a year until GTE agreed to modify its policy. (See Exhibit 7) Rather than initially requiring MGC to purchase a D-4 channel bank (in every instance) from GTE, GTE will, when facilities are available, allow MGC to provision loops behind remotes when GTE has "spare facilities." (See Exhibit 7). However, if no facilities are available, MGC would still be required to purchase the D-4 channel bank as described above. While GTE is moving in the right direction, MGC still loses many prospective customers due to this issue.

The proliferation of loops located behind remotes acts as a barrier to competition and forecloses any opportunity for consumers who are served by those loops to benefit from the fruits of competition. Therefore, the Commission should include loops served by remote switches, pair-gain devices, or digital loop carriers in its definition of loops and must require the ILECs to provide these loops at parity.

EXHIBIT A-1

EXHIBIT 1

Information Industry Services

Ameritech

October 01, 1998

OCT 05 1998

Mr. Rick Heatter
Attorney
MGC Communications, Inc.
3301 North Buffalo Drive
Las Vegas, NV 89129

Dear Mr. Heatter:

Ameritech Information Industry Services is updating its special construction procedures in order for our field forces to work more efficiently on approved orders and better serve our customers.

As of November 2, 1998, when Ameritech responds to a request for an unbundled loop where facilities are not available and Ameritech quotes special construction charges, requesting carriers will be given five (5) business days to approve or cancel the charges provided in the "No Facilities Special Construction" form sent from the Ameritech Information Industry Services Service Center via fax.

In addition, beginning on November 2, 1998, Ameritech will cancel any service orders where the requesting carrier has not approved the quoted special construction charges within the five (5) business days approval timeframe. Any orders canceled through this process must be resubmitted via a new ASR (Access Service Request) form or via EDI.

The "No Facilities Special Construction" form and additional information on special construction charges can be found on our TCNet website (tcnet.ameritech.com) under Unbundled Loops in the Unbundling Elements Ordering Guide.

If you have any questions about these changes, please do not hesitate to contact me.

Sincerely,

Richard E Loechl

Richard Loechl
Account Manager

Information Industry Services
Floor 3
350 North Orleans
Chicago IL 60654

Ameritech®

Post-it® Fax Note 7671	Date 10/8	# of pages ▶ 1
To Rick Heatter	From Jill Giroux	
Co./Dept. MGC	Co. MGC	
Phone #	Phone #	
Fax # 702-310-5689	Fax #	

October 01, 1998

Ms. Jill Giroux
Director, Strategic Relations
MGC Communications, Inc.
1460 Renaissance Drive, Suite 410
Park Ridge, IL 60068

Dear Ms. Giroux:

Ameritech Information Industry Services is updating its special construction procedures in order for our field forces to work more efficiently on approved orders and better serve our customers.

As of November 2, 1998, when Ameritech responds to a request for an unbundled loop where facilities are not available and Ameritech quotes special construction charges, requesting carriers will be given five (5) business days to approve or cancel the charges provided in the "No Facilities Special Construction" form sent from the Ameritech Information Industry Services Service Center via fax.

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The "No Facilities Special Construction" form and additional information on special construction charges can be found on our TCNet website (tcnet.ameritech.com) under Unbundled Loops in the Unbundling Elements Ordering Guide.

If you have any questions about these changes, please do not hesitate to contact me.

Sincerely,

Richard E Loechl

Richard Loechl
Account Manager

Rick Heatter

From: Jill Giroux [jgiroux@ameritech.net]
Sent: Thursday, October 08, 1998 12:27 PM
To: Rick Heatter
Cc: Kent Heyman; Jim Hurley; John Boersma
Subject: Ameritech Position on Special Construction

I received a letter from Ameritech, dated October 1, describing a procedural change that goes into effect November 2. The procedural change pertains to special construction charges where facilities are not available. Back in July, Ameritech informed us that they would expect MGC to pay special construction charges if there were no facilities. In the example that they provided to us, if MGC needed one pair of wires to serve a customer and there were no facilities and Ameritech decided to lay a 50-pair cable, then Ameritech would charge us for the entire cost of the construction and retain the right to use the remaining 49 pairs in any manner they wished. We told Ameritech, at that time, that we'd come back at a later date to fight this battle. I think the time is now, since the new procedures call for Ameritech to cancel our request for an unbundled loop if we do not commit in advance in writing to pay the special construction charges.

According to Mike Starkey, we should be on solid ground on this issue. In a conversation with him a couple of months ago, he told me that Ameritech is required, per the Act, to make facilities available to us on the same terms and conditions that they would to a retail customer. Mike said it would be unheard of in a densely populated area like Chicagoland to ever charge an end user special construction. (He said it might be different in a downstate area where it could take miles of cable to reach a remotely situated farmhouse, but Chicago would definitely be a different story.)

Your thoughts?

Rick Heatter

From: RICHARD.LOECHL@a1ac.ameritech.com[SMTP:RICHARD.LOECHL@a1ac.ameritech.com]
Sent: Tuesday, October 20, 1998 10:14 AM
To: Jill Giroux
Subject: Special Construction charges (issue #29)
Sensitivity: Confidential

Jill:

In any instance where MGC has requested loop(s) facilities to a customer premises and no working facilities are available at that point to assign to MGC's order, MGC is advised that no facilities are available, that the order is delayed and the requested DD may be missed. Also at this point, the Ameritech Facilities Resolution Center develops a Special Construction Charge quote to make the requested loop(s) facilities available to meet MGC's order.

Ameritech's minimum increment of distribution facilities is 25 pair cables and terminals so even if MGC required only a single pair the Special Construction charges would be based on labor and material for a 25 pair cable and terminal. However, if Ameritech decided that construction of a substantially larger cable - perhaps providing for future growth potential - was warranted, MGC would still only be charged for the 25 pair increment. In any instance where more distribution facilities are constructed than is necessary to meet MGC's loop order requirements, MGC will be charged only for what is necessary for their order requirements. This policy applies to any "no facilities" situation, whether or not it involves IDLC.

Rick

LR

Write letter re dispute resolution (use RSC dispute request on system)

Rick Heather

MGC

MGC Communications, Inc.

October 19, 1998

Mr. Richard Loechl
Account Manager
Ameritech Information Industry Services
350 North Orleans
Floor 3
Chicago, Illinois 60654

Dear Rick:

A disturbing situation was recently brought to my attention. One of MGC's first customers, for whom we are currently processing an order for service, called Ameritech Retail to determine how quickly she would be able to establish new phone service. She was told she could have phone service the same day "if her LEN was already in the switch," and in three business days if Ameritech needed to dispatch someone to her location. When MGC placed the order for service for this customer, MGC was told that a dispatch would be necessary, and it would be *seven business days* before force and load could accommodate the installation activity. How is it possible that a Retail service representative consults the same Force & Load system as the AIIS service representative, and obtains a more advantageous due date for the "retail" customer?

While I am well aware of the performance criteria for the provisioning of unbundled loops in Section 25.1.3 of MGC's Interconnection Agreement with AIIS, MGC believes this performance standard to be the maximum allowable time for AIIS to perform a specified activity rather than the minimum allowable time. Pursuant to Section 251(c)(3) of the Telecommunications Act, Ameritech has "[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, *nondiscriminatory* access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

While I hope that this situation was simply a "fluke," MGC expects parity from Ameritech and will use all means available to us to ensure that we secure it. We will watch for and document additional occurrences. In the meantime, we would like AIIS' written confirmation that Ameritech will provide services to MGC on the same terms and conditions that it does its own retail units.

Sincerely,

Jill M. Giroux

Jill M. Giroux
Director – Strategic Relations

Cc: James J. Hurley III
Rick Heatter

MGC

Direct Dial

nt F. Heyman
Vice President
General Counsel
(702) 310-8258
eyman@mgccom.com

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Legal Counsel
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Molly Pace
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ace@mgccom.com

Angela Banbury
Legal Administrator
(702) 310-4230
nbury@mgccom.com

<u>VIA FACSIMILE 312-335-2927</u>

October 26, 1998

Vice President – Network Providers
Ameritech Information Industry Services
350 North Orleans, Floor 3
Chicago, Illinois 60654

Re: Notice of Written Request To Appoint Designated Representative under §27.18 of the Interconnection Agreement Between Ameritech Information Industry Services ("Ameritech") and MGC Communications, Inc. ("MGC") regarding "Special Construction Charge" Dispute

Dear Vice President - Network Providers:

Please be advised that MGC requests that Ameritech appoint a designated representative withauthority to settle the dispute regarding special construction charges. By letter dated October 1, 1998, Richard Loechl, Ameritech Account Manager assigned to MGC advised MGC that "as of November 2, 1998, when Ameritech responds to a request for an unbundled loop where facilities are not available and Ameritech quotes special construction charges, requesting carriers will be given five (5) business days to approve or cancel charges provided" by Ameritech. Mr. Loechl further clarified Ameritech's position regarding this issue in an October 20 email to Jill Giroux at MGC. Mr. Loechl advised that "where MGC has requested loop facilities to a customer premises and no working facilities are available at that point to assign to MGC's order, MGC is advised that no facilities are available... a Special Construction Charge quote is developed to make the requested loop facilities available. Ameritech's minimum increment of distribution facilities is 25 pair cables and terminals so even if MGC required only a single pair the construction charges would be based on labor and material for a 25 pair cable and terminal".

Ameritech is required, pursuant to the Telecommunications Act of 1996 (the "Act"), to make facilities available to MGC on the same terms and conditions that would be offered to a retail customer. If, for example, a Chicago resident were to request that Ameritech provide telephone service and Ameritech were to discover that no facilities were available, Ameritech would install a 25 pair cable and would not charge the resident the labor and material required to install the new cable. To charge MGC for the full labor and material in the same circumstances is discriminatory and violative of the Act.

In order to resolve this dispute short of litigation and pursuant to the terms of the interconnection agreement between our companies, MGC expressly invokes the requirements of § 27.18, the Dispute Escalation and Resolution section of the Interconnection Agreement between the parties.

Kent F. Heyman, Vice President and General Counsel, will be the representative designated to negotiate a settlement of this dispute on behalf of MGC. MGC and its designated representative will make all reasonable efforts to meet and negotiate in good faith to resolve this dispute. Please advise me of the Ameritech representative so we may immediately begin our efforts to resolve this dispute.

Sincerely,

Richard E. Heatter
Legal Counsel, Midwest Region

cc: Viice President & General Counsel
Ameritech Information Industry Services
Jill Giroux
Kent Heyman
Richard Loechl

* * * COMMUNICATION RESULT REPORT (OCT.26.1998 4:53PM) * * *

TTI MGC COMM LEGAL DEPT

FILE	MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
81	MEMORY TX		13123352927	OK	P. 3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

MGC

MGC Communications, Inc.
Legal Department

Facsimile Transmittal Sheet

DATE: 10/26/98
NUMBER OF PAGES (INCLUDING COVER): 3
RE: ~~Your Request~~ Notice of written request

PLEASE CONTACT ANGELA AT (702) 310-4230 IF YOU HAVE ANY QUESTIONS ABOUT THIS FAX

TO: Richard Loechl
Phone:
Facsimile: 312-335-2927

* * * COMMUNICATION RESULT REPORT (OCT.26.1998 4:46PM) * * *

TTI MGC COMM LEGAL DEPT

FILE	MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
80	MEMORY TX		13122450254	OK	P. 3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWER
E-2) BUSY
E-4) NO FACSIMILE CONNECTION

MGC

MGC Communications, Inc.
Legal Department

Facsimile Transmittal Sheet

DATE: 10/26/98
NUMBER OF PAGES (INCLUDING COVER): 3
RE: ~~Your Request~~ Notice of written request

PLEASE CONTACT ANGELA AT (702) 310-4230 IF YOU HAVE ANY QUESTIONS ABOUT THIS FAX

TO: VP + General Counsel
Phone:
Facsimile: (312) 245-0254

* * * COMMUNICATION RESULT REPORT (OCT.26.1998 4:42PM) * * *

TTI MGC COMM LEGAL DEPT

FILE	MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
79	MEMORY TX		13123352927	OK	P. 2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

MGC

Direct Dial

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V President
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M lyn H. Ash
Legal Counsel
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Manager, Legal Administration
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mpace@mgccom.com

A la Banbury
Legal Administrator
(702) 310-4230
abanbury@mgccom.com

VIA FACSIMILE 312-335-2927

October 26, 1998

Vice President -- Network Providers
Ameritech Information Industry Services
350 North Orleans, Floor 3
Chicago, Illinois 60654

Re: Notice of Written Request To Appoint Designated Representative under §27.18 of the Interconnection Agreement Between Ameritech Information Industry Services ("Ameritech") and MGC Communications, Inc. ("MGC") regarding "Special Construction Charge" Dispute

Dear Vice President - Network Providers:

Please be advised that MGC requests that Ameritech appoint a designated representative withauthority to settle the dispute regarding special construction charges. By letter dated October 1, 1998, Richard Loechl, Ameritech Account Manager assigned to MGC advised MGC that "as of

Information Industry Services
350 North Orleans
Floor 3
Chicago, IL 60654
Office 312/335-6641
Fax 312/335-[illegible]

Richard Loechl
Account Manager

Ameritech®

December 1, 1998

Richard E. Heatter
Legal Counsel, Midwest Region
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, Nevada 89129

Re: Notice of Written Request to Appoint a Designated Representative for Dispute Resolution

Dear Mr. Heatter:

Please accept our apologies for our delay in responding to your letter dated October 26, 1998 in which MGC Communications, Inc. ("MGC") invokes Section 27.18 of the 251/252 Interconnection Agreement to resolve a dispute regarding special construction charges. The designated representative of Ameritech to resolve the dispute is Eric Larsen, General Manager Sales – LEC. Ameritech's designated representative is prepared to meet and discuss this dispute with MGC as soon as possible.

Please contact Eric Larsen at (312) 335-6657, or me at (312) 335-6641 to schedule a date, time and location for the Dispute Escalation and Resolution Meeting.

Sincerely,

Richard Loechl

Richard Loechl

MGC
Communications, Inc.

Memo

To: Kent Heyman

From: Rick Heatter

Date: 01/26/99

Re: "Special Construction Charge" Dispute with Ameritech

Following is a rough outline of the issues raised by the position Ameritech is taking regarding "special construction charges."

FACTUAL SUMMARY:

Rick Loechl of Ameritech advised MGC in a letter (October 1, 1998) of Ameritech's policy regarding "special construction charges." Effective November 2, 1998, when Ameritech responds to a request for an unbundled loop where facilities are not available, Ameritech will quote a special construction charge and MGC has five (5) days to approve or cancel the order.

If MGC approves the order, it must agree to waive any rights it may have to dispute the special construction charge. Ameritech is precluding MGC from reserving its right to dispute the charge and, in effect, is precluding MGC right to seek dispute resolution under the Interconnection Agreement.

ISSUES:

- Is Ameritech treating MGC as it would one of its own retail customers?
- Do the special construction charges being imposed on MGC meet the conditions specified in Ameritech's tariff?
- Are the special construction charges being assessed to MGC a duplication of costs already reflected and recovered in Ameritech's recurring and nonrecurring charges associated with the purchase of an unbundled loop?

I. Parity.

Under the Telecommunications Act Of 1996 ("Act") section 251(c)(2)(C), Ameritech must provide interconnection to CLECs at least equal in quality to that which the ILEC provides to itself, to any of its subsidiaries or to any other party to which it interconnects.

In addition, an ILEC is obliged by sections 251(c)(2)(D) and 251(c)(3) of the Act to provide interconnection and access to unbundled network elements (UNEs) on terms that are just and reasonable and non-discriminatory.

In its Interconnection Order in CC Docket No. 96-98 issued in August 1996 ("Order"), the FCC interpreted these provisions of the Act to require that in addition to providing UNEs on terms and conditions under which the ILEC provisions such elements to itself but that UNEs be provided under terms and conditions "that would provide an efficient competitor with a meaningful opportunity to compete." (Order, paragraph 315).

Ameritech does not assess its own customers such charges to perform these same tasks.

II. Tariff/Interconnection Agreement.

A. Interconnection Agreement

A loop is "unavailable" if it is located in an area not presently served by Ameritech, not when the area is served but for some reason the order requires a field dispatch. (MPSC Order, Case No. U-11654, October 2, 1998, page 8). For example, new subdivision is constructed which is as yet unserved by Ameritech.

Our Interconnection Agreement (section 9.4.1) provides: "Ameritech shall only be required to make available Network Elements where such Network Elements ... are available."

B. Tariff

Ameritech is allowed to impose special construction charges under the conditions specified in its special construction tariff (Ill. C. C. No. 20, Part 2, Section 5)

The charge for PG Flex Unit (fed by an HDSL line) does not meet any of the above-referenced conditions identified in Ameritech's tariff.

III. Costs

The special construction charges recover costs included and filed by Ameritech in seeking approval of TELRIC studies in the Illinois costing docket (_____). These costs were reflected in the established rates for unbundled network elements including those for unbundled loops.

The cost of equipment, engineering and labor to install a TG Flex Unit are included in the TELRIC studies approved by the Illinois Commission.

IV. Waiver

By adding the waiver language to the service order, Ameritech is trying to prevent competitors from using the complaint process.

TA-A 22.5

START FILE
Ameritech
Special construction
Escalation.

MGC

...ect Dial

...nt F. Heyman
Vice President
General Counsel
...2) 310-8258
...yman@mgccom.com

Marilyn H. Ash
Legal Counsel
...2) 310-8461
...h@mgccom.com

Richard E. Heatter
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Molly Pace
Manager, Legal Administration
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...ace@mgccom.com

Angela Banbury
Legal Administrator
(...2) 310-4230
...nbury@mgccom.com

VIA FACSIMILE 312-335-2927

October 26, 1998

Vice President – Network Providers
Ameritech Information Industry Services
350 North Orleans, Floor 3
Chicago, Illinois 60654

Re: Notice of Written Request To Appoint Designated Representative under §27.18 of the Interconnection Agreement Between Ameritech Information Industry Services ("Ameritech") and MGC Communications, Inc. ("MGC") regarding "Special Construction Charge" Dispute

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Ameritech is required, pursuant to the Telecommunications Act of 1996 (the "Act"), to make facilities available to MGC on the same terms and conditions that would be offered to a retail customer. If, for example, a Chicago resident were to request that Ameritech provide telephone service and Ameritech were to discover that no facilities were available, Ameritech would install a 25 pair cable and would not charge the resident the labor and material required to install the new cable. To charge MGC for the full labor and material in the same circumstances is discriminatory and violative of the Act.

In order to resolve this dispute short of litigation and pursuant to the terms of the interconnection agreement between our companies, MGC expressly invokes the requirements of § 27.18, the Dispute Escalation and Resolution section of the Interconnection Agreement between the parties.

Kent F. Heyman, Vice President and General Counsel, will be the representative designated to negotiate a settlement of this dispute on behalf of MGC. MGC and its designated representative will make all reasonable efforts to meet and negotiate in good faith to resolve this dispute. Please advise me of the Ameritech representative so we may immediately begin our efforts to resolve this dispute.

Sincerely,

Richard E. Heatter
Legal Counsel, Midwest Region

cc: Viice President & General Counsel
Ameritech Information Industry Services
Jill Giroux
Kent Heyman
Richard Loechl

EXHIBIT A-2

<u>EXHIBIT 2</u>

EXHIBIT A-2

Post-it® Fax Note 7671

Date 1/7	# of pages ▶ 1
To RICK HEATTER	From JILL GIROUX
Co./Dept. MGC	Co. MGC
Phone # x4272	Phone # 2582
Fax # 702-310-5689	Fax # 847-768-9548

** TOTAL PAGE.02 **

Ameritech

DATE: 01/06/99	TIME: 3:20 PM

TC NAME: MGC COMMUNICATIONS	ORIGINATOR: DIANE LEGG
VOICE #: 847 768-2620	FAX #: 847 768-9548

END USER NAME: MGC COMMUNICATIONS

PON: 30-00000117	ORDER NO: C2485044149

FACILITY CHARGES FOR: PF FLEX UNIT ELECTRONIC DEVICE. THE CUST MUST BE WILLING TO LET AMERITECH DISC THREE OF THEIR WORKING LINES TO INSTALL AND TURN UP THIS EQUIPMENT. THE LINES WILL BE OUT OF SERVICE FOR ONE DAY THE CUST MUST SPECIFY THE LINES TO BE USED.

EQUIPMENT/MATERIAL:	$ 1853.30
OTHER: PLANT LABOR COST	$ 4144.92
TECH TIME:	$
ENGINEERING TIME:	$ 968.00
COMMON & SHARED COST:	$ 2399.86
TOTAL:	$ 9366.08

IF ACCEPTED BY (DATE): 01-07-99	SERVICE DATE WILL BE: 02-18-98

CHARGES **ACCEPTED** BY: ______________________ DATE: ________

CHARGES **DECLINED** BY: ______________________ DATE: ________

By authorizing Ameritech to commence special construction as described herein.

MGC COMMUNICATIONS

1) agrees to pay Ameritech the special construction charges required to make available the facilities subject to this special construction request and 2) expressly waives its rights, if any to dispute the special construction charges in the amount identified in this quote. All quotes provided will be completed with the best knowledge known to Ameritech at the quote time. Customers will have the ability to approve any additional special construction not contained in the quote, if applicable.

FROM: AMY KONTOWICZ *804 N. MILWAUKEE FLOOR 4*
MILWAUKEE, WI 53202

FAX # (414) 227-6917 *VOICE #: (800) 924-3666 EXTENSION: 2008*